

***The State of Western Australia v Bennett* [2009] WASCA 93 (26 May 2009) – Western Australia Supreme Court (Court of Appeal)**

‘Damaging property’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Stealing motor vehicle’ – ‘Threat to kill’ – ‘Totality’ – ‘Wilful damage by fire’

Charge/s: Stealing a motor vehicle, wilful damage by fire, threat to kill.

Appeal type: Appeal against sentence.

Facts: On a number of occasions, the male respondent threatened the female complainant who he was in a relationship with. The respondent put his face against her, and said aggressively, ‘I’ll do 25 over you. If I can’t have you, no one will have you’. A few days later, the complainant told the respondent she was leaving him, and he said to her, ‘If you think you’re going to walk away I will kill you’. A few days after that, the intoxicated respondent grabbed the complainant’s throat and said, ‘I am going to kill you. If I can’t have you, no one can’. Afraid, the complainant left for a few days. The drunk respondent then stole a motor vehicle and crashed it into a wall at the front of the house. He spread petrol through the house and lit it on fire. The sentencing judge sentenced the respondent to 15 months’ imprisonment on the arson offence, 6 months’ imprisonment for stealing a motor vehicle, and 9 months’ imprisonment for the threat to kill. Her Honour recognised that the offence of threatening to kill took place on a different occasion but thought all sentences should be served concurrently.

Issue/s: Some of the grounds included –

1. The sentences imposed on the offences of arson and threat to kill was manifestly inadequate.
2. The sentencing judge erred in her application of the totality principle.

Decision and Reasoning: The appeal was allowed. The respondent was resentenced to an aggregate sentence of 4 years and 9 months' imprisonment. The sentence of imprisonment was manifestly inadequate. The arson offence required the imposition of a deterrent sentence. The respondent's personal circumstances carried less weight because this was a case of arson but regardless these did not provide much by way of mitigation. The appellant was a mature age, had an extensive criminal record, and his substance abuse problem could only be offered as an explanation rather than an excuse for his behaviour. This was a very serious case of arson '*because the respondent's offending was apparently motivated by revenge, it caused the destruction of a residential building, and it was against the background of a violent domestic relationship*' (See [48]-[51]). Further, the threat to kill was a very serious one. It was made against a history of domestic violence, and the complainant was afraid of the respondent (See [54]-[56]).

Miller JA additionally held that the sentencing judge erred in her application of the totality principle. There was nothing crushing about imposing a cumulative sentence on the threat to kill offence. The sentence on the offence of threat to kill should instead have been lowered to reflect the totality principle (See [58]-[62]).